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REDACTED
FOR PUBLIC INSPECTION

June 25, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition for Waiver of Sage Telecom, Inc. and Sage Telecom of Texas, L.P
WC Docket No. 06-122; CC Docket No. 96-45
~~CONFIDENTIAL TREAMENT REQUESTED~~

Dear Ms. Dortch:

Sage Telecom, Inc. and Sage Telecom of Texas, L.P. (collectively, "Sage") hereby submit an original and four redacted copies of Sage's Petition for Waiver. Attached to the original of this letter is the confidential version of this filing. Sage requests confidential treatment under Section 0.459 of the Commission's rules[1] of Sage's Petition for Waiver, which has been labeled "Confidential — Not for Public Inspection."

Sage's Petition for Waiver contains sensitive company information not available to the public, including competitively sensitive information about Sage's universal service contributions.

As required by Section 0.459(b) of the Commission's rules, Sage provides the following information regarding its request for confidential treatment:

1. Confidential treatment is requested for the dollar values reflecting Sage's revenues (both projected and actual) and contribution obligations, including true-up amounts.
2. This information is submitted as part of a waiver request surrounding Sage's universal service liability for FY2006.
3. The information being submitted is commercially and financially sensitive and is privileged. The Petition for Waiver provides detailed information regarding Sage's universal service projections and contributions that is not otherwise publicly available.

[1] 47 C.F.R. § 0.459.

4. The telecommunications industry is highly competitive.[2]
5. The release of such information will cause substantial competitive harm to Sage. Disclosure of Sage's universal service projections, contributions and true-up amounts would give Sage's competitors access to privileged information that would affect the actions of those competitors, including Sage's revenue figures. Competitors seeking to compete with Sage could utilize such information to position their pricing and/or extrapolate sensitive data regarding Sage's financial condition and plans for the future.
6. Sage considers the information in the Petition for Waiver to be proprietary and confidential and does not distribute such information to any party outside of the company, with the exception of outside counsel.
7. The information in Sage's Petition for Waiver is not available to the public and has not been disclosed to any other third party, with the exception of outside counsel.
8. The information provided in the Petition for Waiver should never be released for public inspection, as this document contains proprietary company information that is competitively and financially sensitive. At minimum, the financial information in this Petition for Waiver should be protected for not less than five years.

For the foregoing reasons, Sage respectfully requests that the Commission provide for confidential treatment for its Petition for Waiver.

If you have any questions regarding this Waiver Petition or the confidentiality request, please contact the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

By: ______________________
L. Charles Keller

[2] *See, e.g.*, *Trends in Telephone Service*, §§ 8-9, (2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270407A1.pdf; *Local Telephone Competition: Status as of June 30, 2007*, 1-3, Chart 1 (2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280943A1.pdf (describing growth in competitive providers, including mobile providers and industry line loss in recent years).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Petition for Waiver of the Universal Service Contribution True-Up Methodology of Sage Telecom, Inc. (Filer 499 ID 819036) and Sage Telecom of Texas, L.P. (Filer 499 ID 826362)	)	
	)	

To: The Wireline Competition Bureau

PETITION FOR WAIVER OF SAGE TELECOM, INC. AND SAGE TELECOM OF TEXAS, L.P.

Sage Telecom, Inc. (Filer 499 ID 819036) and Sage Telecom of Texas, L.P. (Filer 499 ID 826362), (collectively, "Sage") seek a limited waiver of the requirement that the annual true-up contribution and refund factors be based on the two highest and lowest contribution factors, respectively, for the fund year 2006.[1] This limited waiver will be consistent with the purpose of the rule, correct an inequitable contribution that would otherwise result by mechanical operation of the rule, and prevent a potential hardship to Sage, a small carrier providing a true competitive wireline alternative for primarily residential customers in twelve states.

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[1] *See Federal-State Joint Board on Universal Service et al.*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5753 (2001) ("2001 Order"); Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("2002 Order"); Order and Second Order on Reconsideration, 18 FCC Rcd 4818, 4824 (2003) ("2003 Order").

I. FACTUAL BACKGROUND

On February 1, 2007, Sage Telecom, Inc. ("Telecom Inc.") and Sage Telecom of Texas, L.P. ("Texas L.P.") began filing their universal service revenue reports separately.[2] Previously, Texas L.P.'s revenue had been reported on Telecom Inc.'s Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) filed with the Commission.[3] Because the two entities began filing separately in February 2007, when it was time to file the annual revenue report, Form 499-A, on April 1, 2007, the two entities filed that report separately as well.[4] Because Telecom Inc. had projected Texas L.P.'s revenue in its quarterly filings for 2006, the revenue that Telecom Inc. reported on its Form 499-A was lower than the sum of its quarterly projections by the amount of Texas L.P.'s actual annual revenues. Texas L.P., for its part, had not filed separate quarterly revenue projections during 2006 (as those revenues had been included in Telecom Inc.'s projections) but reported actual revenues on Form 499-A that roughly corresponded to the difference between Telecom Inc.'s projections and its Form 499-A actual revenues.[5]

The FCC Form 499-A requests annual revenue data for the prior year so that, as necessary, USAC may "true-up" accounts by collecting or refunding from contributors any over-

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[2] On that date, the two entities filed separate FCC Form 499-Q Telecommunications Reporting Worksheets.

[3] Telecom Inc. and Texas L.P. are affiliated entities. Telecom Inc. is the sole general partner of Texas L.P., and wholly owns the single other, limited partner in Texas L.P.

[4] The FCC Form 499-A filing is designed to allow the Federal Communications Commission ("Commission") and Universal Service Administrative Company ("USAC") to calculate contributions to the universal service support mechanisms, telecommunications relay services, the administration of the North American Numbering Plan, and the shared costs of local number portability administration.

[5] There was a slight difference, of less than 1%, due to normal imperfections in quarterly projections.

payments or under-payments made based on the Form 499-Q revenue projections. "If the combined quarterly revenues reported by a contributor are *less* than those reported on its FCC Form 499-A, USAC collects the difference from the contributor using *an average of the two highest contribution factors* for the year."[6] Meanwhile, any refunds for overprojections on the Forms 499-Q are "based on the average of the two *lowest* contribution factors."[7] The "purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly revenue data."[8] Even though the Sage entities contributed appropriately based on Telecom Inc.'s quarterly revenue reports, however, because the two entities filed separate Forms 499-A in April 2007, these true-up calculation methodologies functioned at cross-purposes to require Sage to pay net contributions of $[redacted] beyond its equitable contribution level.

Specifically, in the "true-up" process, USAC credited Telecom Inc. a refund in the total amount of $[redacted] based upon the lowest two contribution factors, averaging 9.65 percent. At the same time, Texas L.P. was charged a true-up amount of $[redacted] based upon the two highest contribution factors, averaging 10.7 percent. But for the true-up rule, the two payments would have been virtually identical and effectively cancelled each other out. But for Texas L.P.'s separate filing, Telecom Inc. would have been eligible for a $[redacted] credit. However, based on information provided to Sage by USAC, the difference between the refund provided to Telecom Inc. and the true-up payment billed to Texas L.P. that is *solely* attributable to the use of the lower contribution factor for the former calculation and the higher contribution factor,

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[6] 2003 Order, 18 FCC Rcd at 4824 (emphasis added).
[7] *Id.* (emphasis added).
[8] *2003 Order,* 18 FCC Rcd at 4824.

including the elimination of Telecom Inc.'s expected credit, represents an increase in contribution liability of $[redacted]. This is a significant amount of money for a company the size of Sage.

II. REQUEST FOR WAIVER

The Commission may waive its rules for "good cause shown."[9] A waiver is appropriate "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[10] Good cause for waiver may also be "found in cases where allowing deviation from a rule requirement would not disserve the rule's underlying purpose and would better serve the public interest than requiring strict compliance."[11] In considering waiver requests, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.[12]

Good cause exists for a waiver in this case. As discussed in more detail below, the purpose of the true-up methodology will not be served by application of the rule to Sage in this case. As discussed below, the true-up methodology was designed to encourage accurate quarterly reporting, which Sage recognized. Absent relief, an inequitable hardship will be imposed on Sage by exercise the true-up methodology.

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[9] 47 C.F.R. § 1.3. The Commission has elsewhere defined waivers to be appropriate where "the underlying purposes of the rule would not be served or would be frustrated in the instant case" 47 C.F.R. § 1.925(b)(3). The Commission has noted that "there is no material difference between the waiver standard in Section 1.3 and the standard set forth in Section 1.925(b)(3)." *Waiver Requests By Clarity Media Systems, LLC To Operation CARS Stations At Flying J Travel Plazas*, Order 22 FCC Rcd 8382, 8384 n.21 (M.B. 2007) (internal citations omitted).

[10] *Northeast Cellular Telephone v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[11] *Mobile Satellite Ventures Subsidiary LLC*, Memorandum Opinion and Order, 22 FCC Rcd 20548, 20550 (I.B. 2007).

[12] *WAIT Radio v. FCC,* 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972).

A. The Purpose of the True-Up Rule Would Not Be Served in These Circumstances

As noted above, the Commission has stated that the "purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly revenue data."[13] More specifically, the true-up methodology was designed. "to provide an incentive for carriers to accurately report their quarterly revenues,"[14] and create a disincentive for contributors to take advantage of the time value of money and systematically under-forecast their revenues on the Form 499-Q.[15]

In this case, however, *Sage accurately forecasted its revenue* – in fact, the sum of Telecom Inc.'s forecast figures were off by less than 1 percent in the aggregate from the two entities' Form 499-A actual revenues. Thus, the purpose of the rule would not be served by its application in this case, and a waiver is justified.[16] The true-up rule would not have penalized the company here but for the filing of a separate Form 499-A for Texas L.P. at the end of the reporting year. As a separate legal entity, Texas L.P. was required to file separate revenue reports; it did not do so at its own option.[17] Thus, strict application of the true-up methodology would yield a perverse result – penalizing a carrier that accurately predicted its revenue.[18]

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[13] *2003 Order,* 18 FCC Rcd at 4824.
[14] *2001 Order*, 16 FCC Rcd at 5753.
[15] *See 2002 Order*, 17 FCC Rcd at 24972.
[16] *See supra* note 9.
[17] "Each legal entity that provides interstate telecommunications service for a fee ..., including each affiliate or subsidiary of an entity, must complete separately and file" a revenue report. FCC Form 499-A (2008), Instructions at 8. *See also* 47 C.F.R. 54.711(a) (requiring filing per the Form). The two entities do not post their revenues to the same general ledger and thus are ineligible to file jointly. *Id.*
[18] Moreover, strict application of the methodology in this case may serve as a disincentive for other contributors to register separate corporate entities.

The Commission has recognized that the true-up rules should not be applied rigidly so as to penalize carriers that did not under-forecast their revenues.[19] Following the conversion of the contribution base from historical revenues to projected revenues, the Commission released a series of waivers to parties that otherwise would have faced unjust true-up payments.[20] The Commission granted waivers where, "even if [the carrier's] projections ... were completely accurate and [the carrier] made appropriate contributions for these quarters, it would have contributed more through the annual true-up process than its equitable share."[21] Sage, too, was forced to contribute an extra $[redacted] beyond its equitable share as a result of the true-up process unless a waiver is granted. Thus, this prior precedent supports a waiver for Sage.

The Commission requires USAC to use a high contribution factor to compute true-ups for carriers that under-forecast and a low factor to compute refunds for carriers that over-forecast to create an incentive for carriers to forecast accurately. Sage forecasted its revenues accurately on its quarterly reports, and contributed an appropriate amount during 2006. Thus, it should not be penalized by the true-up rules.

B. A Waiver Would Serve the Public Interest

A waiver here is also consistent with other waivers the Commission has granted where special circumstances are present and "application of the [rule] would impose a significant

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[19] *See Federal-State Joint Board on Universal Service*, Order, 19 FCC Rcd 24049 (WCB 2004); *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 2243 (WCB 2005) ("*New Edge Waiver*"); *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 14699 (WCB 2005);

[20] *See id.*

[21] *New Edge Order*, 20 FCC Rcd at 2244-45.

hardship."[22] Although the $[redacted] at issue here is not even rounding error in the administration of the fund, it is a significant amount of money for a carrier of Sage's size. Granting Sage a waiver in this case will ensure that Sage is not required to contribute more than an "equitable and non-discriminatory" amount.[23]

Sage is a small local exchange carrier serving about 280,000 customers in twelve states. Unlike other competitive local exchange carriers ("LECs") that target ISPs or large businesses as their customers, 98 percent of Sage's customer base is residential, and 79 percent of Sage's customers live in rural or suburban areas. Sage markets extensively to marginalized communities, such as Spanish-speaking customers, and is willing to work with credit-challenged and other customers that may be unable to obtain service from larger LECs. Thus, Sage provides a valuable competitive option for customers that might otherwise be unable to obtain service. Moreover, Sage provides its service via AT&T's Local Wholesale Complete commercial UNE-P replacement offering. Given current pricing of this fundamental input to Sage's service, Sage has very little margin to price its service offerings competitively and still earn a profit. The true-up penalty here amounts to about $[redacted] per customer, which is a significant amount of money given Sage's financial model.

Waiver of the true-up rules in this instance would serve the public interest, and should be granted.

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[22] *See, e.g., Request for Review by ABC Cellular Corporation,* Order, 17 FCC Rcd 25192, 25196 (WCB 2002).
[23] 47 U.S.C. § 254(b)(4), (d).

CONCLUSION

For the foregoing reasons, Sage requests that the Commission waive the requirement that the annual true-up contribution and refund factors be based on the two highest and lowest contribution factors, respectively, for the fund year 2006, for Texas L.P. and Telecom Inc.

Respectfully submitted,

SAGE TELECOM, INC. AND SAGE TELECOM OF TEXAS, L.P.

By: ______________________

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Its attorneys

June 25, 2008

DECLARATION

I, Robert W. McCausland, hereby declare under penalty of perjury as follows:

I am a duly authorized officer of Sage Telecom, Inc., ("Sage Telecom"); Sage Telecom (Filer 499 ID 819036) is the sole general partner of Sage Telecom of Texas L.P. (Filer 499 ID 826362); I am duly authorized by Sage Telecom to sign the instant certification of Sage Telecom of Texas, L.P. in accordance with the terms of the underlying partnership agreement of Sage Telecom of Texas, L.P.; and, acting as an agent of Sage Telecom, Inc. and Sage Telecom of Texas, L.P. (collectively "Sage").

I have reviewed the foregoing Petition for Waiver, and certify that the facts stated therein are true and correct to the best of my personal knowledge and belief.

Rob W. McCausland

Robert W. McCausland

Dated: 6/23/08